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Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENROY RICHMOND, SAMUEL WARKIE, PRINCE R. SIAW AND MARLON HATTIMORE,	:	Case No: 08 CV 3577 (LTS)(HBP)
Plaintiffs,	:	<u>ECF Case</u>
-against-	:	
GENERAL NUTRITION CENTERS INC. AND NEIL BLITZER,	:	
Defendants.	:	

DEFENDANTS' MOTION TO QUASH THE DEPOSITION
NOTICE OF KENNETH WUNSCHEL

Pursuant to Rule 45(c)(3)(A)(ii) and (iv) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), Defendants General Nutrition Centers, Inc. ("GNC") and Neil Blitzer, by counsel, hereby move to quash Plaintiff's June 9, 2009, Deposition Notice of Kenneth Wunschel. Defendants state as follows in support of their Motion:

1. On June 12, 2009, Plaintiffs served Defendants by email only with Deposition Notices for six (6) GNC employees, including Employee Relations Director Kenneth Wunschel. A copy of Plaintiffs' Deposition Notice of Kenneth Wunschel and accompanying email is attached hereto as Exhibit A. The parties never agreed to accept service of documents by electronic mail and Defendants have not received a copy of Kenneth Wunschel's Deposition Notice by any other means.

2. Plaintiffs noticed Mr. Wunschel's deposition for 1:00 p.m. on Wednesday, June 24, 2009, at the offices of Intelleges, Inc., 3960 Broadway, New York, New York, 10032. *See Exhibit A.*

3. Mr. Wunschel works and resides in Pittsburgh, Pennsylvania, outside the Southern District of New York and over 100 miles from the place specified for his deposition. *Id.* Mr. Wunschel does not regularly transact business in person within the Southern District of New York or within 100 miles from the location noticed for his deposition. *Id.* As such, and pursuant to Fed. R. Civ. P. 45(b)(2), Mr. Wunschel is located outside the range within which Plaintiffs may subpoena him to appear for the noticed deposition.

4. Mr. Wunschel is neither a party to this action nor an officer of GNC. Therefore, Mr. Wunschel's Notice of Deposition should be quashed pursuant to Fed. R. Civ. P. 45(c)(3)(A). *See, e.g., M'Baye v. N.J. Sports Prod., 246 F.R.D. 205, 207* (S.D.N.Y. 2007) ("The plain language of Rule 45(c)(3)(A)(ii) is clear that unless a person is a party to the litigation or an officer of a party, he cannot be compelled to travel more than 100 miles from where he resides, is employed, or regularly transacts business in person.").

5. In addition to being exempt from service to appear for the noticed deposition, Mr. Wunschel's deposition would be unduly burdensome, unreasonably cumulative, duplicative and expensive. Plaintiffs previously deposed Mr. Wunschel in Pittsburgh, Pennsylvania, on April 30, 2009, pursuant to Fed. R. Civ. P. 30(b)(6). During Mr. Wunschel's deposition, Plaintiffs' counsel had ample opportunity to – and did – question Mr. Wunschel extensively about his knowledge of information relevant to this lawsuit.

As such, reopening Mr. Wunschel's deposition, regardless of location, would be unduly burdensome under Fed. R. Civ. P. 45(c)(3)(A) and unreasonably cumulative, duplicative and expensive under Fed. R. Civ. P. 26(b)(2)(c).

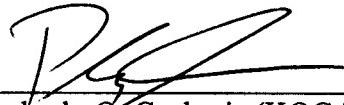
6. Pursuant to Local Rule 37.3(a), counsel for Defendants has contacted counsel for Plaintiffs in a good faith attempt to resolve this discovery dispute. In two separate emails dated June 15, 2009, counsel for Plaintiffs was asked to withdraw the Deposition Notice for Mr. Wunschel based on the legal arguments outlined above and in order to avoid unnecessary litigation expenses. To date, no response has been received.

Wherefore, based on the foregoing, Defendants, by counsel, respectfully request the Court to enter an Order Quashing Plaintiffs' Deposition Notice of Kenneth Wunschel, and granting such other relief as the Court deems appropriate.

Dated: New York, New York
June 16, 2009

McGUIREWOODS LLP

By:



Kimberly Q. Cacheris (KQC 7179)

Philip A. Goldstein (PAG 0908)

Benjamin R. Holland (BRH 4426)

McGuireWoods LLP

1345 Avenue of the Americas, 7th Floor

New York, New York 10105

Counsel for Defendants

SO ORDERED

EXHIBIT A

Goldstein, (Associate) Philip A.

From: daryl.davis@domandavis.com
Sent: Friday, June 12, 2009 10:03 PM
To: Goldstein, (Associate) Philip A.
Cc: Latif Doman
Subject: Richmond et al. v. GNC: Deposition Notices
Attachments: GNC. Deposition Notice. Kenneth Wunschel.pdf; GNC. Deposition Notice. Raul Cedo.pdf; GNC. Deposition Notice. Vincent Cacace.pdf; GNC. Deposition Notice. Neil Blitzer.pdf; GNC. Deposition Notice. Pam Maiti.pdf; GNC. Deposition Notice. Vincent MARIANI.pdf

Phil,

Attached are courtesy copies of the deposition notices served today.

Thank you.
Daryl Davis

Daryl Davis, Esq.
Latif Doman, Esq.
DOMAN DAVIS LLP
66 Main Street, Suite 511
Yonkers, New York 10701
(646) 217-0973
Attorneys for Plaintiffs

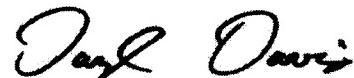
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENROY RICHMOND, SAMUEL WARKIE,
PRINCE R. SIAW AND MARLON HATTIMORE, : Case No: 08 CV 3577
: (LTS)(HBP)
: Plaintiff, :
: DEPOSITION NOTICE OF
-against- : KENNETH WUNSCHEL
: GENERAL NUTRITION CENTERS INC. AND :
NEAL BLITZER, :
: Defendants. :
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PLEASE TAKE NOTICE, that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiffs will take the deposition, before a qualified notary public by oral examination, of Kenneth Wunschel, the Employee Relations Manager for defendant General Nutrition Centers Inc., on Wednesday, June 24, 2009, beginning at 1:00 p.m., and continuing thereafter until completed. The deposition(s) will be taken at the offices of Intelleges, Inc., 3960 Broadway, New York, NY 10032. The deposition will be recorded by digital voice recorder and videotape means.

New York, New York
June 9, 2009

DOMAN DAVIS LLP



By: _____
Daryl Davis (DD 8471)

**Doman Davis LLP
66 Main Street, Suite 511
Yonkers, NY 10701
Attorneys for Plaintiffs**

CERTIFICATE OF SERVICE

I, DARYL DAVIS, hereby certify that on June 12, 2009, I served a copy of the Deposition Notice of Kenneth Wunschel on the following parties by personal service:

Philip A. Goldstein, Esq.
McGuire Woods LLP
1345 Avenue of the Americas
Seventh Floor
New York, NY 10105-0106
pagoldstein@mcguirewoods.com

Date: June 10, 2009

